

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER TEMPLIN, et. al., :
:
Plaintiffs, : CIVIL ACTION
: NO. 09-4092
v. :
: INDEPENDENCE BLUE CROSS, et. al., :
: Defendants.

ORDER

AND NOW, this 14th day of February 2011, upon consideration of Defendants Independence Blue Cross and QCC Insurance Company's ("IBC Defendants") Motion to Dismiss the Second Amended Complaint (Doc. No. 54), Plaintiffs' Brief in Opposition to the Motion to Dismiss (Doc. No. 57), IBC Defendants' Reply Brief in Further Support of the Motion to Dismiss (Doc. No. 58), and Defendant Carefirst, Inc.'s Answer (Doc. No. 52), as well as consideration of the Second Amended Complaint (Doc. No. 48) and after Oral Argument held on January 21, 2011, it is ORDERED as follows:

1. Defendants IBC Defendants' Motion to Dismiss the Second Amended Complaint (Doc. No. 54) is GRANTED in part. Count Three of the Second Amended Complaint is DISMISSED WITH PREJUDICE.¹

¹ Plaintiffs bring Count Three of the Second Amended Complaint pursuant to the Pennsylvania Quality Health Care Accountability and Protection Act, 40 PA. STAT. § 991.2101 ("Act 68"). In Solomon v. U.S. Healthcare Systems of Pennsylvania, Inc., a three-judge panel of the Pennsylvania Superior Court held that Act 68 does not create a private right of action. 797 A.2d 346, 352-53 (Pa. Super. Ct. 2002). The court reasoned that, given that the Act establishes an administrative procedure by which a provider can file a complaint with the Pennsylvania Insurance Department, the Pennsylvania Legislative did not intend to create a private remedy. Id. But see Grider v. Keystone Health Plan Central, Inc., No. 01-5641, 2003 WL 22182905, at *29 (E.D. Pa. Sept. 18, 2003) (declining to follow Solomon and concluding that "it is consistent with the underlying purpose of the legislative scheme to imply a private cause of action and that the Supreme Court of Pennsylvania would also do so"). The Court here finds that Solomon

2. With respect to the balance of the Motion including the issue of attorney's fees, interests, and costs, the parties shall appear for mediation before Magistrate Judge Carol Wells on **February 18, 2011 at 10:30 a.m.** in room 3016, United States Courthouse, Philadelphia, Pennsylvania. The parties and/or persons with full authority to settle must accompany counsel to the mediation unless excused in advance by Judge Wells.

BY THE COURT:

/s/ Joel H. Slomsky, J.
JOEL H. SLOMSKY, J.

represents an accurate prediction of how the Pennsylvania Supreme Court would decide the issue. Accordingly, since Act 68 does not create a private right of action, Plaintiffs do not state a claim in Count Three of the Second Amended Complaint.